

September 1, 2009

Mr. Allen Burns—A-7
Acting Deputy Administrator
Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

Re: “Lookback” Process Regarding DSI Contracts

Dear Mr. Burns:

More than eight months ago, in December 2008, the Ninth Circuit Court of Appeals issued its decision in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration (PNGC v. BPA 1)*. The Court held that the cash payments made by BPA to its aluminum DSI customers, Alcoa Inc. and Columbia Falls Aluminum Company, and BPA’s contract with Port Townsend Paper were unlawful. The Court ordered BPA to “determin[e] the applicability of the [DSI FY 2007-2011] agreements’ severability and damage waiver provisions in light of our holdings.”

On August 5, the Court issued an order denying BPA’s and Port Townsend Paper’s petitions for rehearing of the December 2008 decision. On August 14, the Court entered an order staying issue of its mandate for 30 days.

In addition, on August 28, the Court issued its opinion in *Pacific Northwest Generating Cooperative, et al. v. Bonneville Power Administration (PNGC v. BPA 2)*, the Court ruled that cash payments made to Alcoa under the FY 2009 amendment to Alcoa’s FY 2007-11 contract were unlawful. The Court again remanded the case to BPA with instructions to determine what amounts are owing by DSI customers.

Earlier, in letters dated June 10 and July 24 to regional customers, stakeholders and other interested parties, BPA said that it would act as promptly as reasonably possible in resolving the Lookback issues, and laid out a schedule and a process for resolving the issues remanded to it by the Court. Subsequently, BPA delayed initiating its process due to uncertainty about when the Court’s December 2008 opinion would become final. Any uncertainty about the Ninth Circuit’s December ruling has now been removed, and further, we know that the FY 2009 payments made to Alcoa under its amended contract are also unlawful.

On August 19, BPA also put out for comment a proposed long term contract with Alcoa Inc. We believe that the Lookback issues should be resolved *before* BPA enters into any contract or contract amendment with its DSI customers for the period starting October 1, 2009. It would not be responsible for BPA to enter new contracts with the DSIs without first determining what amounts must be recovered from them and how BPA will assure that recovery on a timely basis. At a minimum, any new contracts with the DSIs must include a

provision which requires the DSIs to repay in full (with interest) all Lookback amounts immediately upon a final decision regarding Lookback issues.

BPA has had an extended period of time to develop its response to the Court's remand, including the Lookback issues. BPA should promptly initiate the Lookback process because there is no justification for further delay.

Since October 1, 2006, BPA's public preference customers have paid in their rates the costs of BPA's unlawful cash payments to the aluminum DSIs and a below market sale to Port Townsend Paper. BPA must not agree to incur additional costs that will be borne by preference customers to benefit the DSIs before determining how it will recover from the DSIs the subsidies already found unlawful by the Court. Additionally, as the Court's opinion strongly suggests, BPA should not enter into contracts for future service to the DSIs and incur costs for such service that will be borne by preference customers in preference rates. Rather, BPA should immediately refund to preference customers those sums already unlawfully provided the DSIs.

We urge BPA to proceed immediately with the "Lookback" process, and to make provisions to refund to preference customers the charges improperly included in their rates.


Very truly yours,

PACIFIC NORTHWEST GENERATING
COOPERATIVE



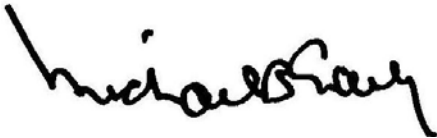
By: _____

PUBLIC POWER COUNCIL



By: _____

INDUSTRIAL CUSTOMERS OF
NORTHWEST UTILITIES



By: _____

NORTHWEST REQUIREMENTS
UTILITIES



By: _____

WESTERN PUBLIC AGENCIES GROUP



By: _____

WASHINGTON PUBLIC UTILITY
DISTRICTS ASSOCIATION



By: _____

NORTHWEST PUBLIC POWER
ASSOCIATION



By: _____

IDAHO CONSUMER-OWNED UTILITIES
ASSOCIATION



By: _____

WESTERN MONTANA ELECTRIC G&T
COOPERATIVE, INC.



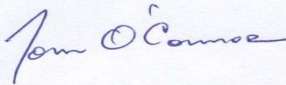
By: _____

WASHINGTON RURAL ELECTRIC
COOPERATIVES ASSOCIATION



By: _____

OREGON MUNICIPAL ELECTRIC
UTILITIES ASSOCIATION



By: _____

OREGON RURAL ELECTRIC
COOPERATIVES ASSOCIATION



By: _____

OREGON PEOPLE'S UTILITY DISTRICT
ASSOCIATION



By: _____